United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

UNITED STATES OF AMERICA :

Appellee :

vs. : No. 24,193

R. MARBURY STAMP :

Appellant :

374

PETITION FOR REHEARING

Pursuant to Rule 40, Federal Rules of Appellate Procedure, Appellant, R. Marbury Stamp, respectfully petitions for rehearing of the Court's decision of December 20, 1971. This Petition is timely because the Court has enlarged the time within which it may be filed, to and including February 2, 1972.

POINTS FOR REHEARING

1. Appellant, R. Marbury Stamp, hereby adopts and incorporates by reference herein, the three (3) points for rehearing advanced by the Appellant, Walter R. Reynolds, in that Appellant's Petition for Rehearing, and the arguments proffered in support thereof by the Appellant, Walter R. Reynolds.

2. In rejecting Appellant Stamp's claim that his "due process of law" and "speedy trial" constitutional rights were denied, the Court failed to consider the content of the documents which had been destroyed when the Appellant's office was closed, 35 months after the last date of illegal activities claimed in the Indictment, or the exonerating effect these documents could have had upon the defense of the Appellant, R. Marbury Stamp.

ARGUMENT IN SUPPORT OF POINT II

In analyzing the facts and explaining the Government's theory

of this case, the Court in its Opinion, stated at Page 7,

> "Appellant Stamp, a mortgage broker, was responsible for submitting various loan applications to Eastern; none of the 'straws' made personal application to the bank for any of the loans. Appellant Freeman, secretary of Reynolds Construction, and defendant Dienelt, Reynolds' outside accountant, were instructed by Reynolds to obtain the 'straw' purchasers. Only being able to find five willing parties between them, Freeman resorted to picking 12 names at random from the 1960 Harvard Alumni Directory. These 12 parties had no knowledge of their selection and were never informed of their being listed as purchasers in any of the documents for the loans. Freeman also fabricated false credit statements for these 12 parties. Even the credit information supplied for the five bona-fide 'straw' parties contained statements which grossly overstated the 'straws' true assets."

It was apparent, since the defendant Dienelt, was acquitted, that the jurors were only concerned with the use of "fictitious" straw persons and "forged" loan applications, etc. All the loan applications, that were handled by the Appellant, R. Marbury Stamp, originated in the office of the Reynolds Construction Company, having been prepared by the Appellant, Harlan Freeman. Some of the credit applications were forwarded directly to the Eastern Savings and Loan Association by the Reynolds Construction Company or the information telephoned into Eastern Savings & Loan Association, see Exhibits 2I and 3I (the Lyons transaction), and Exhibits 2K and 3K (the Hays transaction) also Exhibits 2A and 3A (the Berry transaction); or the entire loan application was prepared by the Officers of Eastern Savings & Loan Association, see Exhibits 2T and 3T (the Viek transaction). If the original loan applications were delivered to the R. Marbury Stamp Company, and if these applications bore the credit information and the signatures of the loan applicants, (the straw purchasers) whether fictitious persons or not, they would have been in the custody of R. Marbury Stamp

and they would have exonerated him of any charge of fraudulent intent since he was merely the conduit who conveyed the documents to the bank, without knowledge of any fraud. The exhibits that were introduced into evidence that bore the signature of Mary Speed, the employee of R. Marbury Stamp Company, were carbon copies of the original documents which were kept in the files of the R. Marbury Stamp Company until October, 1966, when the Appellant moved his offices, which original loan applications would have borne the signature of the applicant.

If the original loan applications and other documents had been available for use by the Appellant, R. Marbury Stamp, they would have shown that the information contained in the exhibits obtained by the Government from the files of Eastern Savings & Loan Association, and introduced in evidence, was supplied by the officials of Eastern Savings & Loan Association thereby negating any claim of reliance upon any alleged false documents submitted by R. Marbury Stamp Company to Eastern Savings & Loan Association and this would have tended to exonerate the Appellant, R. Marbury Stamp.

Of course, through the unneccessary delay herein between the date the Government became aware of the alleged criminal activities, (January to March 1964) and the date of the indictment, (November, 1967) the Appellant was effectively prevented from gathering information and documents upon which to base his defense. Leigh and Freeman were warned and put on their guard but not Stamp.

Appellant, R. Marbury Stamp, can make no further assertion regarding the content of the destroyed documents since they were destroyed many years ago, (and many years after the alleged fraudulent transactions occurred), and it is impossible to reconstruct their contents

other than to assume that they would have borne the signatures of the loan applicants (fictitious or not) and the information supplied by the applicant (as it later developed the information was supplied by the Appellant, Harlan Freeman, as well as the signatures).

In addition, the President of Eastern Savings & Loan Association, the one person who was familiar with all the loan transactions herein, passed away during the inordinate delay prior to trial. He certainly could have vindicated the Appellant, R. Marbury Stamp.

In consideration of the foregoing, Appellant, R. Marbury Stamp, argues that this court should alternatively reconsider its Opinion of December 20, 1971, and reverse the conviction of the Appellant, R. Marbury Stamp, or remand this case to the United States District Court for the District of Columbia for further evidentiary hearings as prayed in the Petition for Rehearing of the Appellant, Walter R. Reynolds, (Case No. 24,198).

Stanley M. Dietz
Attorney for Appellant

CERTIFICATE OF SERVICE

A copy of the foregoing Petition for Rehearing was mailed, postage prepaid, this 14 day of February, 1972, to Paul J. Schaeffer, Esquire, Department of Justice, Criminal Division, Room 2549, Washington, D.C., 20530, and to counsel for the other appellants.

Stanley M. Dietz
Attorney for Appellant

IN THE

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,193

UNITED STATES OF AMERICA,

Appellee,

v.

R. MARBURY STAMP,

Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANT AND APPENDIX

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AUTHORITIES CITED

Cases:

*Cases principally relied upon.

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Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANT

STATEMENT PURSUANT TO THIS COURT'S RULE 8(d)

This case was before this Court upon the petition of Appellants Reynolds, Rogers, and Freeman, for a writ of mandamus or prohibition directed to The Honorable Aubrey E. Robinson, Jr. In this petition Appellants sought to restrain the trial on the ground that the bill of indictment had not been validly returned by the grand jury. By order dated May 5, 1969, this Court (Wright & McGowan, J.J., in Chambers) denied the petition without opinion. (J.A. 78).

STATEMENT OF THE CASE

On September 22, 1967 the Appellants Walter R. Reynolds, Harlan E. Freeman, R. Marbury Stamp, and E. Neil Rogers were indicted, along with Bertram G. Dienelt, Jr., and A. Clairborne Leigh in a thirteen count Bill. Count One of the indictment charged a conspiracy in violation of Title 18, U.S. Code, Section 371 to violate D.C. Code Section 22-1301 (False Pretenses) and Section 22-1401 (Forgery), in connection with the re-financing of loans on 17 parcels of real estate in the State of Virginia. Counts Two through Thirteen charged all of the defendants, except Dienelt, with substantive violations of D.C. Code, Sec. 22-1301, each count involving the re-financing of a construction loan on one of twelve parcels of real estate described in Count One of the indictment. On May 20, 1969 a jury acquitted Dienelt, but convicted the other defendants on each of the thirteen counts.

On January 27, 1970, the United States District Court for the District of Columbia, Judge Aubrey Robinson, Sentenced the Appellant, R. Marbury Stamp to serve 20 months to five years on Count One, with all but four months of said sentence suspended, and to serve two years probation: and to serve two years probation on each of the 12 remaining counts consecutively to the sentence imposed on Count One. On January 30, 1970, Appellant R. Marbury Stamp filed his Notice of Appeal. With the exception of A. Clairborne Leigh, the remaining defendants also appealed and by order of this Court dated July 2, 1970 all four appeals were consolidated. The opinions of the Court below are printed as an Appendix to the brief of the Appellant Walter Reynolds, Case No. 24,198.

REFERENCE TO RULINGS

The rulings presented for review are contained in three written opinions and one oral opinion of the Court below. The written opinions are bound with the brief of the Appellant Reynolds as an Appendix. The four decisions are as follows:

1. Pre-trial Memorandum and Order of September 5, 1968, (Reynolds Appendix, P. 1).

2. Pre-trial Memorandum and Order of May 2, 1968 (Reynolds Appendix, P. 22).

3. Denial of Motion for Acquittal of May 15, 1969 (Trial Transcript Vol. V, 5/13/69, P. 599-660, Vol. VI., P. 662, J.A. 111-112).

4. Post trial Memorandum and Order of December 24, 1969 (Reynolds Appendix, P. 28).

QUESTIONS PRESENTED

I. Was the Appellant, R. Marbury Stamp, denied his liberty without due process of law as provided by the Fifth Amendment to the Constitution of the United States of America and a speedy trial as provided by the Sixth Amendment to the Constitution of the United States of America when the Government procrastinated over three years before seeking an indictment?

Appellant Stamp alleges that answer should be affirmative.

II. Did the United States District Court for the District of Columbia commit error by denying the Appellant's Motions to dismiss the indictment because of fundamental defects in the manner of its return and for lack of jurisdiction?

Appellant Stamp alleges the answer should be affirmative.

III. Was the Government's evidence of reliance by Eastern Savings and Loan Association sufficient to sustain the con-

viction on charges of conspiracy to commit forgery and false pretenses and on charges of committing false pretenses?

Appellant Stamp alleges the answer is negative.

IV. Should the records and documents seized in violation of the Fourth Amendment from the co-defendants and introduced into evidence against all the Appellants have been suppressed?

Appellant Stamp alleges the answer should be affirmative.

V. Did the United States District Court for the District of Columbia commit error limiting the cross examination of the Officers of the Eastern Savings and Loan Association relating to the specific loan transactions set forth in the Indictment?

Appellant Stamp alleges the answer should be affirmative.

VI. Did the United States District Court for the District of Columbia commit error denying the Appellant's request for "The Missing Witness Instruction"?

Appellant Stamp alleges the answer should be affirmative.

STATEMENT OF FACTS

In 1963, the Organized Crime and Racketeering Section of the Criminal Division, Department of Justice, and the Internal Revenue Service formed a special task force, known as "The Metro Project" to investigate corruption among public officials of Fairfax County, Virginia, (M.T. Vol. I, 6/4/68, p. 32, 33, 34, 36; 37; S.A. 1-3). By March, 1964, the Internal Revenue Service Agent was aware of the alleged criminal activities of the Appellant Stamp. The principal target of the Metro Project investigation was A. Claiborne Leigh, who had served as Chairman of the Fairfax County Board of Supervisors.

The purpose of the investigation by the Internal Revenue Service was not to conduct "routine audits" of the individuals suspected, but were intended to uncover crimes, (M.T. Vol. I, 6/4/68, p. 49; J.A. 41, 42).

The information relating to the straw party deeds involved herein was a by-product of the bribery investigation and the straw party deals were known to IRS Agent McElroy before the investigation of the Appellant Reynolds was initiated, (M.T. Vol. I, 6/4/68, p. 51, 52, 59, 69, 133; J.A. 44, S.A. 3-4, 6). IRS Agent Evangelist discussed the alleged forgeries of the straw parties' names with the Appellant Harlan Freeman in early 1964, yet the government waited from January 21, 1964 until 1966 to decide to prosecute since the zoning bribery cases were afforded priority to this conspiracy indictment (M.T. Vol. I, 6/4/68, p. 74, 75, 87, 134, 141, 181; (M.T. Vol. II, 6/5/68, p. 194, 200, 219, 226, 242; J.A. 58, 59, S.A. 4).

The Internal Revenue Service did not notify the Appellant R. Marbury Stamp that it was conducting a criminal investigation into his activities and all of the documents which would have provided the basis of his defense were destroyed when his office was moved in October 1966 (M.T. Vol. II, 6/5/68, p. 247, 248, 252; S.A. 10-11), although the Internal Revenue Service advised the other parties charged as co-conspirators of the criminal nature of the investigation from January 1964 through March of 1966, (M.T. Vol. II, 6/5/68, p. 221, 242, 285; S.A. 8-9, 12). The investigation of this matter by the Metro Project was closed May 1966, (M.T. Vol. II 6/5/68, 0. 318; S.A. 12), but the grand jury herein was not convened until March 1, 1967 and the indictment returned on the 22nd day of September, 1967 (J.A. 2).

The Metro Project investigation revealed that the Reynolds Construction Company, of which the appellant Reynolds was a principal (T.T. Vol. V, 5/13/69, p. 598; J.A. 109) desired additional construction loans from the Eastern Savings and Loan Association of Washington, D.C. These loans could not be granted until the Reynolds Construction Corporation sold a number of homes upon which it had existing construction loans. The Appellant, R. Marbury Stamp, a mortgage broker, was advised by the officials of the Eastern Savings and Loan Association to have the Rey-

nolds Construction Corporation enter into straw party deals to effect this purpose, (T.T. Vol. VI, 5/15/69, p. 682; J.A. 114-116). This information was conveyed to the Appellants Reynolds and Freeman by Stamp. Thereafter Freeman and Dienelt obtained straw parties who were named Berg, Ashby, Rees, Sweat, and Sapperstein, each of whom received a $200 fee from the Reynolds Construction Corp. for acting as a straw (T.T. Vol. II, 5/7/69, p. 165, 214, 247, 286, 309). Thereafter the Appellant Freeman provided names of fictitious straw parties, which he obtained from the Harvard Alumni Directory. Appellant Freeman then completed credit statements and loan applications forwarding them to the Office of the Appellant Stamp for processing with Eastern Savings and Loan Association. The Appellant Freeman, did not notify any of the other co-defendants of his actions, keeping the straw party fees for himself (T.T. Vol. VI, 5/15/69, p. 687; J.A. 117). Freeman also supplied the signatures of the fictitious parties wherever required to complete the transactions. Following the straw transactions, the houses were transferred back to Walter Reynolds, and his partner, who made the mortgage payments to Eastern Savings and Loan Assn. until the houses were re-sold to third parties. At the trial the straw parties each acknowledged that he has signed the necessary documents only as a straw party, with no intention to occupy the premises conveyed, including the deeds reconveying the property back to the Appellant Reynolds, and the Court interrupted the trial to instruct the jury that straw party transactions were not illegal (T.T. Vol. II, 5/7/69, p. 302). The government produced seven persons whose names were listed in the Harvard Alumni Directory each testifying that he had never executed any of the documents involved in the different straw transactions, (T.T. Vol. III, 5/8/69, p. 404, 464, 466; T.T. Vol. IV, 5/12/69, p. 479). The Appellants and the Government stipulated that if called, the remaining six fictitious straw parties would supply substantially the same testimony denying any knowledge of the straw transactions (T.T. Vol. V, 5/13/69, p. 594).

The Government called two officials of the Eastern Savings and Loan Assn., who testified to the general procedures followed by Eastern in granting loans (T.T. Vol. II, 5/7/69, p. 127; T.T. Vol. IV, 5/12/69, p. 532; J.A. 86, 95-97), but that Eastern Savings and Loan did not check on the credit information of the applicant (T.T. Vol. IV, 5/12/69, p. 558; J.A. 104), and confronted with an admonition from the Court that proof of reliance by Eastern Savings and Loan Association would be required (T.T. Vol. III, 5/8/69, p. 349. The officials of Eastern Savings and Loan Association testified that Eastern Savings and Loan looked to the real property for its security (T.T. Vol. IV, 5/12/69, p. 559; J.A. 104), and granted loans solely upon the basis of the real estate appraisal (T.T. Vol. II, 5/7/69, p. 135; J.A. 91), and that Eastern would not consider loan applications predicated on false sales (T.T. Vol. II, 5/7/69, p. 532; J.A. 96). At the close of the government's case, the Appellants moved for judgment of acquittal, during which argument the Court questioned the failure of the government to produce witnesses from Eastern Savings and Loan Association to supply testimony of reliance upon the alleged false documents (T.T. Vol. 5, 5/13/69, p. 599, 600, 642 through 644, 635, through 637, 654; J.A. 109-110). Following the denial of the Motions for Judgment of Acquittal, the Appellant Reynolds and the Appellant Freeman offered testimony and the remaining Appellants rested, (T. T. Vol. VI, 5/15/69, p. 662, 675, 682, 692; J.A. 111-117). The Appellants requested an instruction pertaining to the failure of the government to supply the missing witnesses from Eastern Savings and Loan Association and other witnesses who should have been called by the Government and instructions regarding the alleged aiding and abetting of the principal defendant, Walter Reynolds, which were denied (T.T. Vol. VI A, 5/16/69, p. 18 through 28;. The Court instructed the jury (TT. Vol. VII, 5/19/69, p. 694 through 731; J.A. 117-131), and the jury returned a verdict acquitting the defendant Dienelt, who was only charged in the First Count and convicted the remaining defendants as

charged on all counts, (T.T. Vol. VIII, 5/20/69, p. 735). Motions for Judgment N.O.V. and in Arrest of Judgment were denied.

In pre-trial motions the Appellants moved to dismiss the indictment alleging it was vague, indefinite, and duplicitous and on April 28, 1969, the Appellants requested the Court to dismiss the indictment because the Court lacked jurisdiction in that the grand jurors did not read the indictment before issuing it, and only counts I and II were read to the grand jury by the prosecuting attorney while none of the statutes involved were read to the grand jury and allegations were contained in the indictment which were not based upon testimony that had been presented to the grand jury, but which information had been mistakenly supplied by the prosecuting attorney, (M.T. 4/28/69, p. 17 through 19, 21, 29, 31; J.A. 61-77).

The Motions to Dismiss were denied and the Motion for Reconsideration alleging a lack of jurisdiction was denied. (M.T. Vol. _____, 5/5/69, p. 5; J.A. 70-73).

SUMMARY OF ARGUMENT

The Appellant, R. Marbury Stamp argues to the Court that he was denied his liberty without due process of law when the Court failed to dismiss the indictment against him following the showing upon pre-trial motion that he had been denied speedy trial and had been prejudiced by the delay, all of which was attributable to the Government.

Further, the Appellant argues that the Court below should have dismissed the indictment which was improperly returned by the grand jury prohibiting the United States District Court for the District of Columbia from obtaining jurisdiction to try the Appellant. Further, the Appellant, R. Marbury Stamp, argues that the Government failed in its proof when it did not attempt to prove reliance by the Eastern Savings and Loan Association upon the alleged forged documents and alleged false pretenses and the Court below com-

mitted error by limiting cross-examination on vital issues and by refusing to suppress illegally seized documents from evidence and by improperly instructing the jury all of which requires a reversal of the convictions herein and granting a new trial or alternatively dismissing the indictment.

ARGUMENT QUESTION ONE

Was the Appellant, R. Marbury Stamp, denied his liberty without due process of law as provided by the Fifth Amendment to the Constitution of the United States of America and a speedy trial as provided by the Sixth Amendment to the Constitution of the United States of America when the Government procrastinated over three years before seeking an indictment?

Appellant R. Marbury Stamp argues that he was denied his liberty without due process of law as guaranteed by the Fifth Amendment to the Constitution of the United States of America and that he was denied a fair and speedy trial as guaranteed by the Sixth Amendment to the Constitution of the United States of America.

The alleged criminal activities for which R. Marbury Stamp was indicted occured from May 24, 1962 to and including November 26, 1963, (Indictment, J.A. 6-25). Agents of the Internal Revenue Service had sufficient actual knowledge of the transactions which form the basis for the indictment in March 1964, (M.T. Vol. I, 6/4/68, p. 33 through 36, p. 134, M.T. Vol. II, 6/5/68, p. 242, 264, 279, 287; S.A. 11-12).

However, the government deliberately chose to delay prosecution of these charges, giving precedence to criminal investigations involving zoning bribery cases until May, 1966 when the Metro Project was terminated, (Motions T. Vol. I, 6/4/68, p. 134, 141, 181; Motions T. Vol. II, 6/5/68, p. 318; S.A. 12-13). A delay of 26 months occurred between the date when the Government was definitely aware of the alleged criminal activities and the date of the conclusion of the investigation.

There was a four year lapse of time between the date of the first alleged criminal activity, May 1962, and the conclusion of the investigation May 1966, and a six month passage of time between the date of the last alleged criminal activity and the conclusion of the investigation. The Government allowed approximately 11 months to pass following the completion of its investigation and the impanelling of the grand jury on March 1, 1967. The indictment was not returned until September 22, 1967. All of the delay was attributable to the Government. The trial commenced on May 6, 1969, 5½ years after the conclusion of the alleged conspiracy and 19 months after the return of the indictment. Appellant alleges that the total elapsed time between the alleged offenses and the trial violated his rights under the Sixth Amendment.

The facts and the circumstances of each case determine the applicability of the Sixth Amendment. *Taylor v. U.S.*, 99 U.S. App. D.C. 183, 238 F.2d 259 (1956).

For the purpose of determining whether the Sixth Amendment guaranty of a speedy trial has been violated most jurisdictions compute the time elapsed after the formal indictment or information. In this jurisdiction however, the entire period between offense and trial may be considered, *Mann v. U.S.*, 113 U.S. App. D.C. 27, 29, 30, 304 F.2d 394, 396, 397, Cert. Den.; *Hanrahan v. U.S.*, 121 U.S. App. D.C. 134, 348 F.2d 363. Thus, in this case, the speedy trial contention should be assessed from the dates on which the offenses were committed, *Hedgepeth v. United States*, 124 U.S. App. D.C. 291, 364 F.2d 684 and *Hedgepeth v. United States*, 365 F.2d 952, also *Pollard v. United States*, 352 U.S. 354, 361, 77 S. Ct. 481, 1 L. Ed.2d 393. It has been shown in this case that the government has made a deliberate choice for a proposed advantage which caused as much oppressive delay and damage to the appellant, R. Marbury Stamp as it would have caused had it been made in bad faith, *Petition of Provoo*, 17 F.R.D. 183, 202 (D.C., Md.) aff'd 350 U.S. 847. In this case the de-

lay is substantial, prejudice is therefore presumed and to overcome this presumption the Government has the burden of proving that there was no more delay than reasonably attributable to the ordinary process of justice and that the Appellant suffered no serious prejudice thereby, *Williams v. U.S.*, 102 U.S. App. D.C. 51, 53, 250 F.2d 19, 21, when the delay is less than substantial, although purposeful, oppressive or negligent, at least some showing of a strong possibility of prejudice is required.

It is by now well settled, at least in this Circuit, that the statute of limitations is not the only meaningful time period to which the government must adhere in bringing criminal prosecutions. As early as 1962, in *Mann v. United States*, 113 U.S. App. D.C. 27, 29-30, 304 F.2d 394, 396, n.4 (1962), noted:

> "While the point is not important here, we note that in our view, . . . the constitutional guaranty protects against undue delay in presenting the formal charge as well as delay between indictment and trial. The Supreme Court's affirmance of Judge Thomsen's ruling in Provoo, infra, seems to have settled that point . . .
>
> (If) the delay is purposeful or oppressive . . . even an indictment within the limitation period may come too late to square with the Sixth Amendment."

See also *Petition of Provoo*, 17 F.R.D. 183 (D. Md. 1955), aff'd., *United States v. Provoo*, 350 U.S. 857 (1955); see also *Taylor v. United States*, 99 U.S. App. D.C. 183, 238 F.2d 259 (1956). Two years later, in *Nickens v. United States*, 116 U.S. App. D.C. 338, 340, 323 F.2d 808, 810, n.2 (1963), this Court again noted:

> "This is not to suggest that delay between offense and prosecution could not be so oppressive as to constitute a denial of due process."

Judge Wright, concurring in *Nickens*, and referring specifically to *Provoo*, *Mann* and *Taylor*, expressly stated that "delay in bringing a complaint may violate Sixth Amendment rights". Judge Wright went on to point out, in footnote 4 to his concurring opinion:

> "Some Courts have held a complaint and indictment may be delayed with impunity, without regard to the right of speedy trial, because the time of indictment is governed by the statute of limitations . . . But the constitutional right cannot depend on the terms of the statute. As an act of legislature the period of limitations may be extended . . . The period may be done away with . . . The legislature is free to implement the constitutional right and to provide protections greater than the constitutional right. But the minimum right of the accused to a speedy trial is preserved by the command of the Sixth Amendment whatever the terms of the statute."

In *Ross v. United States*, 121 U.S. App. D.C. 233, 349 F. 2d 219 (1965), this Court firmly affixed into law of the District of Columbia the concept that a delay between the time at which the prosecuting authorities (whether they be police, administrative agencies or otherwise) had knowledge of the offense adequate to prosecute and the time at which the prosecution was commenced must not be unreasonably delayed. The delayed prosecution concept is not limited in scope to narcotics cases. Judge Gasch, in *United States v. Parrott*, 248 F. Supp. 196 (D.D.C. 1965), dismissed a prosecution brought under Section 17 of the Securities Act of 1933, 15 D.D.C. 77q (a), on this basis, and this Court, in *Hanrahan v. United States*, 121 U.S. App. D.C. 134, 348 F. 2d 365 (1965) recognized its applicability to mail fraud cases. Notwithstanding that both mail fraud and stock fraud cases are classically made on documentary evidence, as the case at bar amply illustrates,

it is now clear that both types of cases may be so affected by the vice of a prosecution unreasonably delayed as to require dismissal of the indictment.

The rationale of these cases is found in *Hanrahan*, 121 U.S. App. D.C., at 137-38, 348 F.2d 265, at 366-67:

> "In curtailing the length of criminal prosecutions the law recognizes certain interests of the person accused and attempts to protect those interests. Speedy trial provisions seek, first to prevent lengthly pre-trial imprisonment where the accused is unable to make bail, or pre-trial restriction of movement when bail is available. Second, and perhaps equally important, these provisions seek to minimize the anxiety and attendant evils which are invariably visited upon one under public accusation but not tried. Finally, they seek to insure that the ability of the accused person to answer the charge will not be impaired on account of lost witnesses and faded memories due to the passage of time."

This Court upon remanding Hanrahan for a more fully developed record directed the following:

> "If the Court should find that all the delay attributable to the prosecution was necessary for fair and just prosecution of the charge of mail fraud then the convictions will stand. If, on the other hand, the court should find that the prosecution was conducted with such disregard of appellants' interests that it can be said that the delay resulted from the deliberate, or at least negligent, actions on the part of the prosecutor and the prosecutor fails to show 'that the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay' then appellants' Sixth Amendment rights have

> been denied and the convictions must be vacated and the indictments dismissed." 348 F.2d 363, 368 (footnote omitted.)

In response, District Court Judge John A. Sirica conducted an extensive hearing on the aspects of the delay question and concluded: "On the whole record in this case and taking into consideration all of the circumstances the government has demonstrated that the defendants suffered no serious prejudice as a result of the delays which did not ensue from the ordinary and inevitable delay." 255 F. Supp. 957 971 (D.D.C. 1966). Upon the return of the case, this Court, in analyzing and reviewing the evidentiary hearing and opinion resulting therefrom by Judge Sirica, recognized that there are "real and substantial differences between the problems of proof in the defense of a narcotic prosecution and those involved in defending against a mail fraud indictment . . ." *Tynan v. United States*, Sl. Op., pp. 3-4, supra.

Appellants submit, however, that the delay in the prosecution of this case was solely attributable to the prosecution, was not necessary for fair and just prosecution, and further, even if the delay was not deliberate, it was at least negligent action on the part of prosecuting officials, and that the delay was neither ordinary or inevitable – a situation wholly apart from Hanrahan.

Judge Gasch, in *United States v. Parrott*, 248 F. Supp., at 202 wrote:

> "There are four factors in a speedy trial consideration which appear to be crucial: (1) time involved; (2) who caused the delay; (3) the purposeful aspect of the delay; and (4) prejudice to the defendant.
>
> "The time factor is necessarily determined by the point at which the computation begins. In some circuits, the computation of time does not begin until a formal complaint of indictment has been filed."

After reviewing the cases in this Circuit and concluding that such was not the law, Judge Gasch continued:

> "A determination of whether the Sixth Amendment has been violated necessitates a consideration of the entire period between offense and eventual trial. In the instant case, the time period which can be considered as constituting the delay could begin with the date of the first overt act in the indictment. More logically, however, the computation should begin with the date on which the government considered the defendant's actions to be 'criminal'."

In a determination as to who caused the delay, Judge Gasch wrote, 248 F. Supp., at 203

> "There is no absolute test as to what constitutes purposeful delay. Bad faith or chicanery on the part of the government is not a necessary element . . . . In the instant case, it appears that the government has made a deliberate choice to hold the criminal prosecution in abeyance."

The same conclusion is necessary from the facts in the case at bar.

The question as to whether the defendants must demonstrate some prejudice is a knotty one. Again, Judge Gasch has supplied the answer, 248 F.Supp., at 203:

> "Where the delay is substantial, prejudice may be presumed and the government bears the burden of showing that no prejudice has resulted."

Similarly, in *Jackson v. United States,* 122 U. S. App.D.C. 124, 125, 351 F. 2d 821 (1965), this Court adopted a similar test:

> "In some cases, the length of that delay may be so great that prejudice can be presumed un-

> less the government can show otherwise. See *Hanrahan v. United States,* 121 U.S. App. D.C. 134, 348 F. 2d 365 (1965). But we cannot presume prejudice after a delay of five months. Some showing is necessary.
>
> "This is not to say that prejudice must be proved beyond a reasonable doubt, or even by a preponderance of the evidence . . . Since the delay was the clear responsibility of the government and was arranged solely for its advantage, the accused should not be forced to labor under an exacting burden of proof, but he must still show a plausible claim."
>
> "But unless delay is so long that prejudice can be presumed some evidence of prejudice must be produced."

It is submitted that the delay in this case was long enough to require prejudice to be presumed.

Appellant, R. Marbury Stamp affirmatively demonstrated the prejudice accruing to him from this long delay in not being informed of the charges against him by the Internal Revenue Service Agent who investigated his activities and the long delay in obtaining an indictment. At the pre-trial Motion to dismiss, the testimony of Mary Speed, an ex-employee of R. Marbury Stamp & Co., demonstrated that all of R. Marbury Stamp's records had been destoryed by her in October 1966, six months after the completion of the investigation of this case. At no time was appellant R. Marbury Stamp notified that he was undergoing anything other than a "routine" audit. The original loan application which had been received from the Reynolds Construction Corp. by R. Marbury Stamp Co., and which were the basis of the loan applications made by R. Marbury Stamp & Co., to Eastern Savings and Loan Assn. were then inadvertently destroyed, (Motions T. Vol. II, 6/5/68, p. 247, 248, 252; S.A.). Therefore, R. Marbury Stamp was prejudiced in being denied use

of the documents which could have established that he acted in good faith, based upon signed loan applications bearing credit information.

Thereupon, Appellant R. Marbury Stamp argues that he was not only denied his liberty without due process of law as guaranteed by the Fifth Amendment but that he also denied a fair and speedy trial as guaranteed by the Sixth Amendment but that he was also denied a fair and speedy trial as guaranteed by the Sixth Amendment of the Constitution of the United States of America.

ARGUMENT QUESTION TWO

Did the United States District Court for the District of Columbia commit error by denying the Appellant's Motions to Dismiss the Indictment?

The Appellant R. Marbury Stamp adopts all of the arguments proffered by the Appellant Walter Reynolds on this Question.

ARGUMENT QUESTION THREE

Was the Government's evidence of Reliance by Eastern Savings and Loan Association sufficient to sustain the conviction on charges of conspiracy to commit forgery and false pretenses and on charges of committing false pretenses?

The Appellant R. Marbury Stamp adopts all of the arguments proferred by the Appellant Walter Reynolds on this question, and in addition thereto, Appellant R. Marbury Stamp argues that a review of the exhibits which were introduced into evidence prevented any possible inference of reliance upon the loan applications and credit statements which were supplied to the Eastern Savings and Loan Association by R. Marbury Stamp Co. A review of the documents follows in chronological order according to the dates on which each deed was recorded:

TRANSACTION OF PAUL R. REES

Exhibits 2 and 3-D; the credit application does not state that it was checked or approved by Eastern Savings and Loan Association.

TRANSACTION OF HYMAN SAPPERSTEIN

Exhibit 3-G is on the form of R. Marbury Stamp Co., which bears the signature of Hyamn Sapperstein, whereas Exhibit 2-G is incomplete and unsigned. The exhibit bears the notation "credit approved R.S." which is the witness Robert Stoy, an official of Eastern Savings and Loan Association who testified that he was in charge of approving the credit applications but that he did not verify any credit information.

THE ASHBY TRANSACTION

Exhibits 2 and 3-Q bear the notation "credit approved by R.S., (Robert Stoy).

THE SWEET TRANSACTION

Exhibits 2 and 3-E bear the notation "credit approved R.S., (Robert Stoy).

THE BERG TRANSACTION

Exhibits 2 and 3-B have the notation "This loan was approved by Thomas R. Harrison" an official of Eastern Savings and Loan Association. The exhibits indicate that the credit information was again approved by Robert Stoy.

THE CHESLEY TRANSACTION

Exhibits 2 and 3-C bear a notation that the credit was approved by Mr. Alsop, an official of Eastern Savings and Loan Association who was not summoned to testify by the Government.

THE BOESEL TRANSACTION

Exhibits 2 and 3-H indicate the transaction was approved by Vernon Haslip, an official of the Eastern Savings and Loan Assn. who was not summoned to testify on behalf of the Government. The credit being approved by Aubrey S. Stipp an official of the Eastern Savings and Loan Assn. not summoned to testify upon behalf of the Government.

THE LYONS TRANSACTION

Exhibits 2 and 3-I indicate that the application for the loan was received by telephone by Vernon Haslip, yet the credit statement was initialled "R.M. Stamp, Agent," with the notation that the credit was approved by Robert Stoy.

THE HAYS TRANSACTION

Exhibits 2 and 3-K is date stamped May 31, 1962 with the pencilled notation "W.R. Reynolds, phone to D.J.H., May 21, 1962" and stapled to the back is a document stating that credit information was approved by Robert Stoy on October 9, 1962, five months afterwards.

THE SWARTZ TRANSACTION

Exhibits 2 and 3-F have the notation "10/17/62, sold to a new purchaser. See credit statement attached, H.H." and on the credit statement there appears the notation "credit approved R.S.," (Robert Stoy).

THE GURFEIN TRANSACTIONS

Exhibits 2 and 3-M; there is no notation but the credit was approved.

THE HAMMER TRANSACTION

Exhibits 2 and 3-L bear no signature other than "credit approved, R.S.", (Robert Stoy).

THE MACILVEEN TRANSACTION

Exhibits 2 and 3-N have no statement that any credit was approved and the original sales contract accompanying the application was in the name of B. Tory McShane, which was scratched out and MacIlveen's name written in long-hand.

THE OPPENLANDER TRANSACTION

Exhibits 2 and 3-O bear no signature and no statement that the credit was approved.

THE BERRY TRANSACTION

Exhibits 2 and 3-A bear no signatures and were obviously prepared on different typewriters with a notation that the credit was approved by R.S. (Robert Stoy).

THE VIEK TRANSACTION

Exhibits 2 and 3-T with the notation "/s/ Peter Viek (typewritten) Stamp Co., M. Speed, by R.S.: credit approved, R.S., (Robert Stoy). Obviously R. Stoy prepared this entire document.

THE SCHACTSCHNEIDER TRANSACTION

Exhibits 2 and 3-J bear the notation "credit approved R.S.," (Robert Stoy).

No testimony was supplied by any witness that R. Marbury Stamp personally signed any document or had knowledge of any fraudulent behavior and no witness identified the Appellant, R. Marbury Stamp.

Thereupon Appellant, R. Marbury Stamp argues that the Government did not bear its burden of proving that the Eastern Savings and Loan Association relied upon any allegedly false representation or forged documents, but rather

all of the evidence proved that Eastern Savings and Loan Association relied solely upon the appraisal of the real estate by Thomas Owen and Son, Appraisers, who did all of the appraising for Eastern Savings and Loan Association transactions (T.T.Vol. II, May 7, 1969, p. 129, 133, 135; J.A. 88-91).

ARGUMENT QUESTION FOUR

Should the records and documents seized in violation of the Fourth Amendment from Co-Defendants and introduced into evidence against all the Appellants have been suppressed?

Appellant R. Marbury Stamp adopts the argument on suppression of evidence propounded in the brief of the Appellant Walter Reynolds. In addition to the foregoing arguments, Appellant R. Marbury Stamp asserts to the Court that the admission of the illegally obtained documents in evidence so infected the trial as to constitute prejudicial error prohibiting the Appellant R. Marbury Stamp from receivnig a fair trial and denying the Appellant R. Marbury Stamp due process of law. *Nelson v. United States,* 93 U.S. App D.C. 14; 208 F.2d 505; *Hair v. United States,* 110 U.S. App. D.C. 153, 289 F.2d 894.

ARGUMENT QUESTION FIVE

Did the United States District Court for the District of Columbia commit error limiting the cross examination of the Officers of the Eastern Savings and Loan Association relating to the specific loan transactions set forth in the indictment?

Appellant, R. Marbury Stamp argues that the U.S. District Court for the District of Columbia committed prejudicial reversible error in limiting cross examination of both of the Officers of Eastern Savings and Loan Association relating to the specific loan transactions set forth in the indictment.

The witness Robert Stoy and the witness Thomas Harrison testified as Officers of Eastern Savings and Loan Association regarding the general practices governing granting of loans (T. T. Vol. II, 5/7/69, p. 120 through 125, Vol. IV, 5/12/69,

p. 526, 530, 532, 545; J.A. 82-86, 95-99). The Court limited cross-examination by the Appellants to these general practices and would not permit cross-examination relating to the specific loan transactions involved in this indictment, (TT. Vol. II, 5/7/69, p. 127; J.A. 87). This cross-examination was essential to the defense since one against whom serious charges of fraud are made must be given a reasonable opportunity to cross-examine the witnesses who were allegedly defrauded on the vital issue of their reliance upon the alleged fraudulent representations or forged documents. To deny this right of cross-examination to the Appellants was reversible error. *Riley v. Pinkus*, 338 U.S. 269, at 276; 94 L.Ed. 63. The backbone of the defense was the claimed knowledge of Eastern Savings and Loan Association of the fictitious nature of the straw party transactions and the failure of the Government to prove reliance by Eastern Savings and Loan Association upon any straw party deed (TT. Vol. VI, 5/15/69, p. 682; J.A. 114-115).

Therefore, Appellant R. Marbury Stamp argues that the Court should reverse his convictions and grant him a new trial.

ARGUMENT QUESTION VI.

Did the United States District Court for the District of Columbia commit error denying the Appellant's request for "The Missing Witness Instruction"?

Appellant, R. Marbury Stamp argues to the Court that the Appellants were entitled to "the missing witness instruction" in that the Court recognized the failure of the Government to provide witnesses establishing reliance by Eastern Savings and Loan Association upon the alleged fraudulent documents (T.T. Vol. III, 5/8/69, p. 349; Vol. V, 5/13/69, p. 642 through 644; J.A. 109-110).

The Appellant, R. Marbury Stamp rested his case following the denial by the Court of his motion for judgment of acquittal, (T.T. Vol. V; 5/13/69; p. 635 through 637; Vol. VI, 5/15/69, p. 692).

The Appellant requested the "missing witness instruction" (T.T. Vol. VI-A, 5/16/69, p. 18 through 23. This instruction was of particular importance to the Appellant, R. Marbury Stamp, since the Government was also under a duty to prove his alleged guilty knowledge of the fraudulent nature of the documents involved. The Government had available Mary Speed, the ex-employee of the Appellant R. Marbury Stamp, who had testified before the grand jury and who could have been interrogated by the Government regarding Mr. Stamp's activities since her name appeared on the majority of the documents which were introduced into evidence against the Appellant, R. Marbury Stamp. There could be no claim by the Government that any of these witnesses from Eastern Savings and Loan Association or Mary Speed would be hostile to the Government. *Billeci v. United States,* 87 U.S. App. D.C. 274, at 279; *Milton v. United States,* 71 U.S. App. D.C. 394, at 397; *Egan v. United States,* 52 U.S. App. D.C. 384, at 396; *Stewart v. United States,* 135 U.S. App. D.C. 274; *Wynn v. United States,* 130 U.S. App. D.C. 60; *Pennwell v. United States,* 122 U.S. App. D.C. 332; *Gass v. United States,* 135 U.S. App. D.C. 11; *Richards v. United States,* 107 U.S. App. D.C. 197, at 202, 203.

Therefore, Appellant R. Marbury Stamp argues that he was denied his liberty without due process of law, especially since the Appellant, Stamp did not present any testimony in his behalf (T.T. Vol. VI, 5/15/69, p. 692), and he was entitled to the inference that the missing witnesses, if called, would have supplied testimony adverse to the Government's position.

CONCLUSION

Upon consideration of the arguments advanced by the Appellant, R. Marbury Stamp, herein, incorporating by reference the arguments set forth in the brief of the Appellant, Walter Reynolds adopted by R. Marbury Stamp, this Court should reverse the conviction and order a new trial

be granted herein or in the alternative reverse the conviction and order the dismissal of the indictment.

Respectfully submitted,

Stanley M. Dietz

Attorney for Appellant
R. Marbury Stamp

EXCERPTS FROM TRANSCRIPT

[32] THE COURT: What does this have to do with the motion?

MR. AHERN: This has application to the motion to dismiss for timely prosecution.

[33] It is going to be my contention, Your Honor, that these people at a very early stage had knowledge and had before them evidence from which they could have filed a charge in this case.

In other words, we have overt acts in the indictment with respect to Dienelt—

THE COURT: I don't think there is any real contention on that, is there?

Is there any real contention on that?

MR. AHERN: Yes, they say in their response that they didn't—

THE COURT: That is not what their response says at all.

MR. AHERN: May I—

THE COURT: I have read their response and the pleadings in this case, counsel.

MR. AHERN: Your Honor—

THE COURT: If that is the only point then I suggest that you don't have any further questions of this witness.

MR. AHERN: Well—

THE COURT: It is clear what your point is.

[34] MR. AHERN: I would like, Your Honor, if I may, to state that in the response filed by the Government they, I believe, used the date of September, '65.

THE COURT: That is correct.

MR. AHERN: That it dawned on them that other statutes might be involved that were violated other than Revenue.

Now, I think, therefore, as much evidence as I can get in to show that at an earlier date this matter was before them and that they were cognizant of the fact that these straw transactions related to Dienelt, I think that pinpoints an earlier time period and—

THE COURT: I don't think there is any contention that the time point is pinpointed but then we have to argue the law as to whether that is binding.

MR. AHERN: That is correct.

THE COURT: I have tried to suggest to counsel that you establish the basic fact about which there is no contention.

MR. AHERN: All right.

THE COURT: In 1964 they have a whole lot of evidence about these straw transactions.

* * * * *

[36] BY MR. DIETZ:

Q. Mr. Steele, in your conversations with Agent Evangelist in March of 1964 was the name R. Marbury Stamp raised at any time? A. I am sure it was. I don't know about the March, 1964, that is the only reason why I hesitated.

I don't know the first time the name was raised.

Q. To your recollection when was the first time? A. I think it would have been in March. This receipt of these documents is dated in March, which means we would have had some discussion about these various cases prior to March 31, 1964.

MR. DIETZ: That is all I have, Your Honor.

[37] CROSS-EXAMINATION

BY MR. MOLENOF:

Q. Mr. Steele, there were many—I mean, he went over all of your books and records. These aren't the only transactions that he considered. Isn't that right? A. That's right.

Q. I mean, he considered all of your books and records. A. He did.

Q. As a matter of fact, from the year 1963 there was an approximate amount of $44,000 tax deficiency and an approximate amount of $11,000 in penalties assessed against the Company. Isn't that right? A. No, sir, that was not against Reynolds Construction.

Q. What was it? It was against the Walter R. Reynolds Company— A. That was a transaction of Reynolds Con-

struction Corporation that the Agent transferred out of the Construction Corporation into a brokerage corporation.

Q. That was one of the matters he was considering, too, [38] wasn't it? A. Well, that is one—that is the only change that he made on the audit over a three-year period of time, and that has not yet been resolved.

* * * * *

[51] Q. Were any reports made to you orally or in writing concerning the contents of those records? A. No, sir, I couldn't say. No, sir.

Q. Well, did Mr. McElroy, for example, tell you that Harlan Freeman had received from Leigh and Rogers, settlement attorneys, certain fees? A. Oh, yes, that is correct, yes.

Q. In connection with these straw transactions? A. Yes, sir.

Q. This was prior to the time you went into Reynolds Construction Company? A. Now, that I can't say for certain, but it was approximately the same time within like, say, March and July of 1964.

* * * * *

[52] MR. MOLENOF: May it please the Court, I would like to object here when you say was he assigned to this case.

There was a project over in Virginia. This case wasn't a part of the project. This case developed as a result of what was going into the project.

So when you say was he assigned to this case, it is [53] not the fact.

* * * * *

[56] A. Well, the regular office, the Revenue office was a block or so down the street from our office, and naturally I would meet them socially or some other ways—I got to know them—I can't pinpoint how I got to know them. I could have met them socially, like Mr. Murphy knows Mr. Kenneth McElroy and I was in his company—let me put it that way.

Q. So that your testimony is that this organized crime group in Internal Revenue had an office separate and apart from the— A. Yes.

Q. —Alexandria office. A. Yes, sir.

Q. Did you later move your office in Alexandria? A. Yes, sir.

Q. Where did the office move to? A. Bailey's Crossroads.

* * * * *

[59] Q. Did the word forgery ever come up in your discussions with Agent McElroy? A. Forgery?

Not the term forgery, no, sir.

Q. Did you know or did it come to your attention during the course of your audit who signed the sales contracts referred to in Exhibit 1? A. No, sir.

Q. Did you make written reports to Agent McElroy? A. In reference to these transactions right here?

Q. Yes. A. From Reynolds Construction Company are you referring to?

Q. Yes. A. I gave Mr. McElroy—I copied off a list of all the transactions which appeared to be refinancing from Reynolds Construction Company and I did give him that work paper or it was in my case file for Reynolds Construction Company, and any other memorandum I can't think of that I [60] gave him.

* * * * *

[69] Q. Did Mr. McElroy have a briefing in your office in Alexandria as to these transactions? A. He could have. I don't know. I mean I was not concerned with them myself.

Q. You tell me in your own words what you meant by learning of these from Mr. McElroy. A. Well, Mr. McElroy, evidently he was working and he learned from A. Clairborne Leigh—or from the courthouse when he was checking the court records—that there were certain transactions, and these were the transactions, and Mr. Reynolds or the Reynolds Construction Company was a party thereto, and that is how I became aware of these transactions—if that is your question.

Q. Now, Mr. Evangelist, as a result of your assignment to this particular aspect of the work, did you have occasion to talk to any of the parties that are now indicted here, [70] such as Harlan Freeman?

* * * * *

[74] Q. Mr. Evangelist, my name is Bridgeman. I represent the defendant Harlan Freeman.

I wonder if you can tell me to the best of your recollection when it was that you first discussed the question of these particular transactions with Mr. Freeman? A. I think early '64. To the best of my recollection it would be between March and July of '64.

Q. Would you have made an appointment with Mr. Freeman, so far as you can recall, prior to coming to see him? A. Yes, sir.

* * * * *

THE COURT: Well, for the purpose of this motion, isn't it sufficient that it is in the month and year of 1964?

MR. BRIDGEMAN: I think it may not be, Your Honor.

[75] THE COURT: In what respect?

MR. BRIDGEMAN: I think that there may be an issue so far as the motion to suppress is concerned.

THE COURT: Well, it goes right to that.

MR. BRIDGEMAN: Well, I think the timing.

THE COURT: The time was between January and July of 1964, or May and December?

MR. BRIDGEMAN: No, sir, as between before or after March 31, 1964.

THE COURT: Well, the witness' statement was, in answer to one of Mr. Batchelor's questions, that he spoke with Mr. Freeman five or six times, either contemporaneously with this March 31 visit or shortly thereafter.

MR. BRIDGEMAN: Well, I am concerned with knowing, Your Honor, whether there was a discussion prior to the investigation.

THE COURT: Well, ask him the question.

BY MR. BRIDGEMAN:

Q. Well, do you know whether or not you have had any discussions with Mr. Freeman with respect to these general matters at any time prior to March 31, 1964? [76] A. That I can't say with any certitude, but I don't think so.

* * * * *

[87] Q. Now, these settlement sheets that you have just referred to, when did you view them? A. At this particular time.

Q. In March? A. March, '64.

Q. Did you view them at any time before March of '64? A. Well, like I told the other gentlemen, this is when I, you know, these are copies and I must have seen them, you know, before this date.

MR. DIETZ: That is all that I would inquire, Your Honor.

THE COURT: Did you see the copies or the originals at any place other than the Reynolds Construction Company's office?

THE WITNESS: That is the only place that I saw them.

BY MR. DIETZ:

Q. That would have been between January of '64, and March of '64? A. Yes, sir.

* * * * *

[133] Q. You recall no conversation with Mr. Rogers during the year 1964 in regard to these transactions? A. That isn't what you asked. You asked prior to March 31st.

Q. All right, sir. Can you tell me on what date you did have such discussions? A. There were two meetings with Mr. Rogers in our office in Alexandria, Virginia. One was on October 28, 1964, [134] and the other one on November 6, 1964. At this time we went over the settlement files, numerous settlement files, and discussed some aspects of these files, and I am sure during this conversation we discussed the so-called straw deals.

Q. Are you able to tell us from your recollection the first time that you learned of these straw transactions involving sales of homes by Reynolds Construction Company? A. On January 21, 22 and 23, 1964, I microfiled a great many of Mr. Leigh's settlement files in Mr. Leigh's office.

* * * * *

[140] BY MR. DILLON:

Q. I have just one line of questions, Mr. Joyce. In your capacity as the legal advisor for Metro and in connection with your handling of the so-called Fairfax bribery indict-

ments, did there come a time when you participated in a discussion concerning the delaying of the prosecution of [141] this case because of the Fairfax bribery cases? A. By "this case"–

Q. This indictment: Reynolds, Leigh, Rogers, Freeman, Dienelt. A. I don't recall a meeting where that was specifically discussed. Things were given their priority, and the first priority was the grand jury investigation in Alexandria. And at that point the 1952, the interstate facilities cases, were presented to the grand jury.

As we characterized them at the time, the 1014 cases were not presented to that grand jury. And we had problems with venue. Judge Lewis has held in some of the similar cases that where the institutions involved were in the District of Columbia, that venue didn't properly lie in Alexandria. We had such problems as that as to whether this really involved 1014 or not. And the case was transferred from the Alexandria project to Mr. Molenof, and Mr. Molenof then took over and continued with it.

* * * * *

[181] MR. AHERN: Your Honor, may I call upon the Government–not to look at the content of the affidavit because that would not be proper–but it might save me a little time here if I could get a stipulation for the record of the dates when statements were obtained from these people, which I think is material to this question of due diligence by the prosecution in prosecuting this case.

THE COURT: Do you know the dates of the affidavits?

MR. MOLENOF: During the year '65 and '66. Some of them came in '66.

THE COURT: What is the earliest date that you know?

MR. NIZER: December '65, Your Honor.

THE COURT: Very well.

BY MR. AHERN:

Q. December of '65. Mr. McElroy, have you any personal knowledge of why there was this delay between March of '64 and December of '65 before you went to these people and got a statement from them? A. I don't feel like there

was any delay. We were taking one step of action or another all of the time.

* * * * *

[194] BY MR. DIETZ:

Q. Mr. McElroy, prior to March 31, 1964, had the name R. Marbury Stamp appeared on any of these documents that you located or had it been raised in any of your investigation of the Reynolds matter? A. Yes, it had.

Q. When was the name R. Marbury Stamp first brought to your attention? A. They would have been on the settlement sheets which I filmed on March 4, 1964.

Q. That would have been the first occurrence of the name R. Marbury Stamp? A. Yes, sir.

Q. And it's your testimony that on January 20, 21, 22 and 23rd, there was no settlement sheet or other document bearing the name of R. Marbury Stamp brought to your attention? [195] A. That's correct; I don't recall any.

* * * * *

[200] MICHAEL J. EVANGELIST

was recalled as a witness and was examined and testified further as follows:

DIRECT EXAMINATION

THE COURT: You may continue, Mr. Dillon.

* * * * *

BY MR. BATCHELOR:

Q. Well now, if I understand you correctly, sir, that would have put it in September of 1963. A. As I said, I probably contacted Mr. Leigh in June.

Q. Yes, sir. A. But there was quite a delay thereafter before I was able to start the examination, for one thing or another. I was making an examination in Mr. Leigh's office in November of '63; I do remember that.

Q. Well now, you first went there in June, as I understand it. A. That's when I first contacted Mr. Leigh, was in [220] June, yes.

* * * * *

[221] Q. You testified previously that in 60 or 90 days you went there with Special Agent Max Johnson and testified

that Max Johnson gave him advice as to his constitutional rights; didn't you? And you are now saying that that was not true; that it was Special Agent McElroy in January of 1964? A. Yes, that's correct.

Q. Have you looked at memoranda or documentation in your office to make you change your testimony from 1966 to the present time in 1968? A. I didnt keep a diary. Revenue agents are not required to keep a diary.

Q. I understand that, sir. But did you have any kind of memoranda to refer to to cause you to change your testimony? A. Yes, sir, Mr. McElroy's diary, he pointed out, he kept his diary on a daily basis, and he was the first agent to accompany me.

Q. So you are basing, really, your change in testimony upon the diary of Kenneth L. McElroy, Special Agent? A. Yes, sir.

* * * * *

BY MR. DIETZ:

Q. In December of 1963, did your investigation uncover anything regarding the defendant R. Marbury Stamp? A. No, sir, not to my knowledge, no.

Q. In January and February of 1964, did your investigation uncover anything regarding the defendant R. Marbury Stamp? A. Anything in regard to Mr. Stamp, of course, would be in the form of the settlement statements, real estate settlements.

Q. When did you first come across the real estate statements involving R. Marbury Stamp? A. This would probably be the early part of '64.

Q. You say early part. January '64, February '64? A. Well, we didn't get into the settlement files until after Mr. McElroy was in the case.

Q. He came in the case in December of '63, did he not?

MR. MOLENOF: '64.

A. January '64.

* * * * *

MARY SPEED

was called as a witness and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * * * *

[246] BY MR. DIETZ:

Q. Mrs. Speed, all of these applications that you took, were they all accepted? A. No, we had many rejections.

Q. Did you keep files on these applications, including the rejects? A. Yes, sir.

Q. Where were those files kept? A. In our office.

Q. Under whose supervision were these files kept? A. My own.

Q. Did anything occur regarding these files that were kept in Mr. Stamp's office by you? A. What do you mean by that?

Q. Where are they? A. I destroyed most all of them.

[247] Q. When did you destroy most of them? A. When we closed the office in October, when I left him.

Q. Why did you destroy them? A. Well, we were closing the office and we were taking only just minimum stuff, his financial records to his house, and there was no place for them. So I just threw away everything we didn't need.

Q. This was October of '66? A. Right.

Q. Now, prior to that time, in the year 1965, had Mr. Stamp been visited by any Internal Revenue Service agents? A. Yes, sir.

Q. Did you personally talk to these agents or agent? A. Yes, sir.

Q. Do you know the name or names of the agents? A. Mr. Fox.

Q. Was there only one or was there more than one? A. Mr. Fox is the only one I remember ever coming there.

Q. Where did he come? A. To Highland Street.

Q. I'm sorry, I didn't hear you. [248] A. Our office on Highland Street.

Q. Is that Mr. Stamp's office? A. Right.

Q. That's in Arlington, Virginia? A. Right.

Q. Did Mr. Fox say anything to you or to Mr. Stamp in your presence as to the nature of this investigation that he was conducting? A. He talked with Mr. Stamp. I don't know whether I heard him, but I assumed that it was in regard to this refund that we were due and we couldn't have the refund until after they checked our records.

Q. At that time was Marbury Stamp claiming a refund on his income tax? A. Yes, sir.

Q. Was anything said to you or to Mr. Stamp in your presence by the Revenue Agent as to the nature and type of this investigation that you recall? A. Other than it was just a routine check for our refund, I don't know of anything.

* * * * *

[252] BY MR. DIETZ:

Q. Among these records, these loan applications that were accepted or rejected which you destroyed, were there any applications relating to loans involving this Reynolds Construction Company? A. We had applications from individuals buying houses from Reynolds, many of them.

* * * * *

[264] Q. All right. Now, at the time you went to see Mr. Rogers in regard to partnership records, were you aware of potential criminal aspects in the examination of Mr. Leigh and the Leigh and Rogers partnership? A. Of Mr. Leigh, yes, sir.

Q. And the Leigh and Rogers partnership? A. I don't know how you get a criminal case on a partnership.

Q. But, sir, the investigation, the criminal investigation aspect involving Mr.Leigh also involved records of that partnership, did it not? A. Oh, sure.

Q. Did you or anyone in your presence warn Mr. Rogers of his possible criminal involvement by this investigation? A. I do not recall any reference to any possible criminal potential concerning Mr. Rogers.

* * * * *

[279] Q. Thank you, sir. When did you first learn of alleged straw transactions? You are familiar with that phrase, sir, I believe, are you not? A. That is correct.

Q. It appears on certain settlement sheets of the Reynolds Construction Company, doesn't it? A. Yes, sir.

Q. Where did you first gain this knowledge? A. It would probably be from settlement sheets from Mr. Leigh's office.

Q. Approximately when, sir? A. I would say the first time that we had the [280] settlement sheets would be around March '64.

* * * * *

[285] Q. Thank you. Now, subsequently in 1966 I believe you had a significant meeting at the office of Mr. Rogers in the company of other persons. I have specific reference to March 22, 1966. Does that refresh your recollection, sir? A. Yes.

Q. Now, at that meeting can you tell us who was present? A. Internal Revenue agent Shelton, Internal Revenue agent Jack Knee, Mr. Rogers, myself, and possibly his secretary—I think her name is Mrs. Mott—was in and out.

Q. All right, sir. Did there come a time in the course of that meeting that you felt it necessary to warn Mr. Rogers of his constitutional rights? A. Yes.

Q. When in the meeting, sir, did that occur? A. It occurred before we even began talking about anything.

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[318] MR. AHERN: Your Honor, I think Mr. Molenof and I have arrived at a stipulation insofar as this Agent Nizer is concerned which relates to all defendants and, in particular, myself representing Mr. Dienelt: That with respect to the witnesses who were former employees of Mr. Dienelt, that the Government had in their possession, which has already been testified to, between December of '65 and May of "66 all of the statements, affidavits, of these particular parties were received, and that these statements formed the basis for the inclusion of Mr. Dienelt in the present indictment. And that in May of "66 all of the information upon which Mr. Nizer ultimately formed his judgment was before. So May of '66 is a date of some significance.

MR. MOLENOF: The Government will state as of May 1966 we had the results of the collateral inquiries that were sent out which formed partly the basis for including the defendant Dienelt in this particular indictment. However, we will say that while the Government as of May of 1966 had the last inquiry in, that there remained considerable time for the investigating agents to compile all of the report for the purpose of submitting–

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